

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

July 14, 2004

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California

The Honorable David M. Walker
Comptroller General of the United States
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

I am writing to request that the General Accounting Office investigate whether the U.S. Anti-Doping Agency ("USADA"), a non-government federally-funded organization, is operating outside the scope of its mandate as the authority for testing, education, research, and adjudication for U.S. Olympic, Pan Am Games, and Paralympic athletes by conducting selective investigations of doping violations and issuing rulings based on inadequate evidence. I certainly appreciate the importance of preventing and uncovering doping, but recent reports have created a cloud of uncertainty over USADA's procedures as well as the athletes implicated. Regardless of whether any of the implicated athletes qualify for the upcoming Olympics, it is in the interest of all parties to obtain an independent and impartial assessment of USADA.

Numerous charges have been leveled against the fairness or USADA's procedures.

First, is the concern that athletes are being investigated in the absence of direct evidence that they have taken banned substances. For example, Marion Jones, an African American who won an unprecedented five track and field medals, has never failed a drug test and has passed a polygraph. She also has asserted that documents USADA alleges pertain to her could not be her documents. *Lawyer: Jones Passes Lie Detector Test*, L.A. TIMES, June 18, 2004, at D3; Jere Longman, *Drug Accusations Outlined Against 4 Elite Athletes*, N.Y. TIMES, June 9, 2004, at D1. I am also unaware that USADA has conducted any testing or blood analysis with respect to Michelle Collins, an African American and the world indoor 200-meter sprinting champion. See Bill Pennington, *2 Sprinters are Charged with Doping*, N.Y. TIMES, June 24, 2004, at D1. Also, it has been reported that the charges against Tim Montgomery are based entirely on his former association with the owner of BALCO, who is currently under investigation by the Justice Department. *Id.*

Second, is the concern that USADA is conducting it in secret with no recording requirements. In fact, when Ms. Jones called for a public proceeding, it is my understanding USADA rejected her request and even asked that her lawyers publicly release any documents the agency had given them. Liz Robbins, *In Balco Case, Jones Wants Public Hearing*, N.Y. TIMES, June 17, 2004, at D5.

Third is the concern that USADA recently decided to lower its own burden of proof in doping cases. In mid-2004, USADA lowered the burden from proving doping "beyond a reasonable doubt" to proving it "to the comfortable satisfaction" of the members hearing the case. Sally Jenkins, *Due Process? Not for Track Stars*, WASH. POST, June 26, 2004, at D1; Liz Robbins, *Lower Standard of Proof Angers Athletes and Lawyers*, N.Y. TIMES, June 15, 2004, at D2. USADA also concluded that formal evidentiary rules do not apply to arbitration and "evidence" such as hearsay can be used as a basis to charge and adjudicate athletes. Elliot Almond, *USADA is Asked to Retrieve Testimony*, S.J. MERCURY NEWS, June 15, 2004, at SP1.

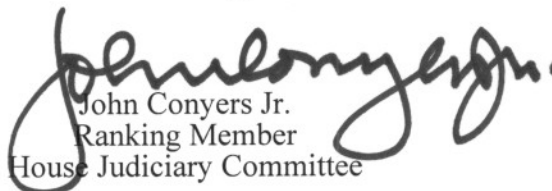
A fourth concern is possible misuse of the grand jury process. Published reports indicate that confidential grand jury information and documents obtained during the Justice Department's investigation have been subpoenaed by Congressional Senate staff and then the material leaked to USADA in order to pursue athletes who were not the target of the government investigation. Associated Press, *Internal Memos: Hearsay Would Be Allowed*, ESPN.Com, June 13, 2004. In addition to USADA's use of confidential grand jury information in its investigations, USADA may have attempted to work deals with the Justice Department, so that individuals facing potential criminal prosecution could either have their charges reduced or escape prosecution all together in exchange for their cooperation. The potential for unfairness is compounded by concerns that one of the targets, an individual who has been indicted on multiple felony counts and who has a well-known grudge against many of the athletes involved, appears to be the source of much of USADA's evidence.

For these reasons, I would request that the GAO examine the following:

- (1) the extent to which USADA has exceeded its authority and jurisdiction to test, educate, research and adjudicate athletes by investigating athletes and issuing rulings based on inadequate circumstantial evidence and hearsay;
- (2) the extent to which USADA has policies and procedures in place to ensure that due process and fairness are observed with regard to its investigations;
- (3) whether USADA has used confidential grand jury information in a legal and fair manner, and whether it is appropriate and within its charter for USADA to receive and use such information in its investigation; and

A GAO investigation into this matter is vitally important. Any recipient of federal funds, particularly one with the ability to adjudicate the rights of others, should be subject to the strictest oversight. The importance of this inquiry is highlighted by the upcoming Olympic Games in Athens, Greece. If you have any questions regarding this request, please feel free to contact me or my staff.

Sincerely,



John Conyers Jr.
Ranking Member
House Judiciary Committee

cc: F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee